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1948. **File No.** Court Fees II /48 (N)

Legal **DEPARTMENT**

B **BRANCH**

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Subject:—

K.S.R.
2/15.

'Rules and Notifications

under the court Fees

Act; 1870.

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C O N T E N T S.

Legal Department File No. Court Fees II/48.

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B.K.S. 21/5/ 5o.

K.S.R.
2215.

Office of the R.L.A.

A revised draft notification is sent herewith.

2. It is advisable for the sake of uniformity to define the term "Backward tribe" on the lines of the definition of the said term in the following Acts namely :-

(1) The Bombay Municipal Boroughs Act, 1925 (Bom.XVIII of 1925) (sec.10(1)(c)).

(2) The Bombay Local Boards Act, 1923 (Bom.VI of 1923) (sec.3(cc)).

(3) The Bombay District Municipal Act, 1901 (Bom. III of 1901). Explanation (2) to sub-section (1) of section 11).

(4) The Bombay Village Panchayats Act, 1933 (Bom.VI of 1933) (sec.3(1)).

Sd/-P.M.L.
2/3
Remembrancer of Legal Affairs.

U.H. to R.D.,No. 2156 , dated the 3rd March 1948.

B.K.S. 21/3/ 48.

Notification.

Revenue Department,

Bombay Castle, Bombay. , 1948.

Court-Fees Act, 1870.

No. 6693/45. - In exercise of the powers conferred by section 35 of the Court-Fees Act, 1870 (VII of 1870), in its application to the Province of Bombay, the Government of Bombay is pleased further to amend Government Notification in the Revenue Department, No. 590, dated the 16th September 1921, as follows, namely :-

In the said notification for sub-clause (b) of clause (9), the following shall be substituted, namely :-

"(b) to remit the fees chargeable on all similar applications made by members of backward tribes in the Province of Bombay."

For the purposes of this sub-clause, "Back-ward Tribe" means a tribe specified in Part II of the Thirteenth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936.

By order of the Governor of Bombay,

V.N. SARDESAI,
Secretary to Government.

B.K.S. 21/5/ 4c.

The judgment recorded by Mr.Justice Tendolkar correctly summarises the position of law. My experience as District Judge shows that, that position has all along been accepted in the mofussil where it is customary to issue a notice to the Collector under section 19H (2) of the Court-fees Act, 1870, whereupon the Collector intimates his valuation to the Court which the party either accepts, or, if he disputes it, further action is taken under section 19H. This position has also been accepted by the Government of India as far back as the year 1913: vide the passage quoted by Mr.Justice Tendolkar in his judgment at pp.13 and 14. The Collecetor of Bombay admits that the valuation of immovable property is generally done by him. In no Province has the work of making valuation of either kind of property, moveable or immoveable, been delegated to Court Officers. As the section stands, such delegation is not possible. It is not the proper function of Court Officers to decide upon the valuation of the property of which probate is sought. That is more appropriately the function of the Collector, and section 19H arms him with sufficient powers for that purpose. It seems that instructions under sub-section (8) of that section have been issued in other Provinces: see the instructions issued by the Government of Bihar and Orissa quoted at pp.610-611 in Chitaley and Rao's Court-fees Act, 1st (1944) edition. A reference may be made to the Collectors in the mofussil and the present practice got confirmed by them. If necessary, instructions under sub-section (8) may then be issued. It is entirely a matter of administrative policy as to what assistance should be given to the Collector for carrying out his duties under section 19H. In my opinion, it is neither

appropriate nor necessary to amend the Court-fees Act and thereby to transfer to Court Officers work which has all along been recognised as the legitimate work of the Collector for which he is naturally better equipped than Court Officers.

Sd/-P.N.L.
17/4
Remembrancer of Legal Affairs.

U.R. to H.D. No. 5773, dated the 19th April 1948.

B.K.S. 21/5/ 4c.

A revised draft notification is sent herewith.

2. The Revenue Department should verify whether it carries out Government's intention.

Sd/- J.R.D.
26/5
Additional Secretary to Government.

U.R. to R.D.No. 5010 , dated the 26th May 1948.

B.K.S. 21/5/ 4c.

NOTIFICATION.

Revenue Department,
Bombay Castle, 1948.

Court Fees Act, 1870.

No. 8084/45. - In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), the Government of Bombay is pleased to remit in the Province of Bombay the fees payable under Article 1 in Schedule II to the said Act, in respect of applications to a Collector, or any Revenue Officer having jurisdiction to entertain such applications or to a Commissioner of A Division for the grant of land to be used for a public purpose of a charitable nature in memory of Mahatma Gandhi.

By order of the Governor of Bombay,

Secretary to Government.

B.R.S. 21/45/ 4c.

Legal Department.

Section 35 of the Court-fees Act, 1870, provides that the appropriate Government may, from time to time, by notification in the local official gazette, reduce or remit, in the whole or in any part of the territories under its administration all or any of the fees mentioned in the First and Second Schedules annexed to that Act. Under the First and Second Schedules to the said Act read with section 6 thereof an application made to the Municipal Commissioner in respect of refund of town-duty is not chargeable with any fee. The only entry in the said Schedules which pertains to the application to the ~~m~~ Municipal Commissioner is as follows :-

> "Application or petition when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement

The provisions of section 35 of the Court-fees Act ~~m~~ can be utilised only when the fees chargeable under the said Act are to be remitted. The proposal of the Revenue Department to issue notification under section 35 of the said Act is not in order because the court fees proposed to be remitted are payable under rule 16 of the Rules made under sec.195(2) of the City of Bombay Municipal Act, 1888, and not under the Court-fees Act, 1870. But it may be pointed out that section 194(1) of the City of Bombay Municipal Act provides that no torn duty shall be leviable on any article which at the time of its importation, is certified by an ~~mx~~ officer empowered by the Government concerned in this behalf to be the property of the Crown. Section 195 of the Act applies to a case where a town-duty has been paid on the importation of any article into the ~~x~~ City. No town-duty is, however, leviable under section 194 on any article, if at the time of its

importation, it is certified by an officer empowered by the Government to be the property of the Crown. If such article was not so imported the question of asking for refund of such duties under section 195 will not really arise.

D Sd/- J.R.D.
17/9
Additional Secretary to Government.

U.R. to R.D., No. 507-Confl., dated the 20th September 1948.

B.K.S. 21/5/ 48.